

DATA USE AGREEMENT

Non-Governmental Entities/Level 2 and Above

AGREEMENT FOR USE OF CENTER FOR HEALTH INFORMATION AND ANALYSIS (CHIA) DATA CONTAINING PROTECTED HEALTH INFORMATION

In order to ensure that the disclosure and use of data derived from the Center for Health Information and Analysis (CHIA) databases complies with M.G.L. c. 12C, 957 CMR 5, and applicable data privacy and security requirements, this Agreement is made between CHIA and

_____, hereinafter termed "Recipient":
(Organization)

1. This Agreement addresses the conditions under which CHIA will disclose and the Recipient will obtain, use, reuse and disclose the CHIA data specified in section 5 and/or any derivative file(s) including those that contain direct individual identifiers or elements that can be used in concert with other information to identify individuals. This Agreement supersedes any and all agreements between the parties with respect to the use of data from the files specified in section 5 and preempts and overrides any instructions, directions, agreements, or other understanding in or pertaining to any other prior communication from CHIA with respect to the data specified herein. Further, the terms of this Agreement can be changed only by a written modification to this Agreement or by the parties adopting a new agreement. The parties agree further that instructions or interpretations issued to the Recipient concerning this Agreement or the data specified herein, shall not be valid unless issued in writing by the CHIA point-of-contact or the CHIA signatory to this Agreement shown in section 19.

2. CHIA agrees to provide the Recipient with APCD and/or Case Mix data as identified in this Agreement. In exchange, the Recipient agrees to pay any applicable fees; the Recipient agrees to use the data only for approved purposes that support the Recipient's study, research or project referenced in this Agreement, which has been determined by CHIA to comply with the regulatory requirements set forth in 957 CMR 5. The Recipient further agrees to ensure the integrity, security, and confidentiality of the data by complying with the terms of this Agreement, M. G. L. chapters 93H and 93I and the privacy and security standards set forth in the federal Privacy Act and the Health Insurance Portability and Accountability Act; and to permit appropriate disclosure and use of such data only as permitted by law and by this Agreement.

3. The parties mutually agree that CHIA retains all ownership rights to the data file(s) referred to in this Agreement, and that the Recipient does not obtain any right, title, or interest in any of the data furnished by CHIA.

4. The Recipient represents, and in furnishing the data file(s) specified in section 5 CHIA relies upon such representation, that such data file(s) will be used solely for the purpose(s) identified in the Recipient's Data Request as it was finally approved by the Executive Director on _____, and attached hereto as **Exhibit A**.

The Recipient represents further that the facts and statements made in any study or research protocol or project plan, including any approved Data Management Plan, submitted to CHIA for each project are complete and accurate. Further, the Recipient represents that said study protocol(s) or project plans,

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that have been approved by CHIA or other appropriate entity as CHIA may determine, represent the total use(s) to which the data file(s) specified in section 5 will be put.

5. The Recipient shall ensure that all individuals, including employees, agents, or contractors, who will use or access CHIA data covered by this Agreement must sign CHIA's Confidentiality Agreement, attached hereto as **Exhibit B**. The Recipient shall keep such Confidentiality Agreements and an access log on file and shall make such Agreements and access log available to CHIA annually and anytime upon request by CHIA. The access log shall contain a list of names of all individuals who use and/ or access CHIA data, including the date such individuals signed a Confidentiality Agreement and when access to and/or use of CHIA data was granted and, if applicable, terminated.

6. The Recipient agrees not to disclose, use or reuse, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement except as specified in an Attachment to this Agreement or except as CHIA shall authorize in writing or as otherwise required by law.. The Recipient affirms that the requested data is the minimum necessary to achieve the purpose(s) stated in section 4. The Recipient agrees that, within the Recipient organization and the organizations of its agents, access to the data covered by this Agreement shall be limited to the minimum amount of data and minimum number of individuals necessary to achieve the purpose(s) stated in this section (i.e., individual's access to the data will be on a need-to-know basis).

7. The CHIA data covered under this Agreement are limited solely to those files listed in the final Data Specification worksheets (for APCD), attached hereto as **Exhibit C**, and/or to the Case Mix files approved for release (included in Exhibit A), and to any data provided under an amendment approved in connection with this request.

8. The parties mutually agree that the aforesaid files(s) and/or any derivative file(s) may be retained by the Recipient until _____, hereinafter known as the "Retention Date." The Recipient agrees to notify CHIA within 30 days of the completion of the purpose(s) specified in section 4 if the purpose(s) are completed before the aforementioned Retention Date. Upon such notice or Retention Date, whichever occurs sooner, the Recipient agrees to destroy such data. The Recipient agrees to destroy and send written certification of the destruction of the files to CHIA within 30 days of notice such notice or Retention Date, using the form attached hereto as **Exhibit D**. The Recipient agrees not to retain CHIA files or any parts thereof after this date unless authorized in writing by CHIA's Chief Privacy Officer, General Counsel or Deputy General Counsel. The Recipient acknowledges its affirmative obligation to destroy the data by the Retention Date and that such obligation is not contingent upon action by CHIA.

The Agreement may be terminated by either party at any time for any reason upon 30 days written notice. Upon notice of termination by Recipient, CHIA will cease releasing data from the file(s) to the Recipient under this Agreement and will notify the Recipient to destroy such data file(s) and any parts thereof. Sections 3, 4, 6, 8, 9, 10, 11, 13, 14 and 15 shall survive termination of this Agreement.

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9. The Recipient agrees to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized use or access to it. The safeguards shall provide a level and scope of security that is consistent with 45 CFR § 164.530(c) and not less than the level and scope of security requirements established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III--Security of Federal Automated Information Systems (<http://www.whitehouse.gov/omb/circulars/a130/a130.html>) as well as Federal Information Processing Standard 200 entitled "Minimum Security Requirements for Federal Information and Information Systems" (<http://csrc.nist.gov/publications/fips/fips200/FIPS-200-final-march.pdf>); and, Special Publication 800-53 "Recommended Security Controls for Federal Information Systems" (<http://csrc.nist.gov/publications/nistpubs/800-53-Rev2/sp800-53-rev2-final.pdf>). The Recipient acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable or deducible information derived from the file(s) specified in section 5 is prohibited. Further, the Recipient agrees that the data must not be physically moved, transmitted or disclosed in any way from or by the site indicated in section 18 without written approval from CHIA unless such movement, transmission or disclosure is required by a law. The Recipient further agrees to adhere to the Data Management Plan approved by CHIA and attached hereto as **Exhibit E**.

10. The Recipient agrees to grant access to the data to authorized representatives of CHIA for the purpose of inspecting to confirm compliance with the terms of this Agreement.

11. The Recipient agrees not to disclose to anyone who is not an authorized user direct findings, listings, or information derived from the file(s) specified in section 5, with or without direct identifiers, if such findings, listings, or information can, by themselves or in combination with other data, be used to deduce an individual's identity. Examples of such data elements include, but are not limited to geographic location, age if > 89, sex, diagnosis and procedure, admission/discharge date(s), or date of death.

12. The Recipient agrees that any use of CHIA data covered by this Agreement in the creation of any document (manuscript, table, chart, study, report, etc.) that is shared with anyone who is not an authorized user of the data must adhere to CHIA's current cell size suppression policy. **This policy stipulates that no cell (e.g., admittances, discharges, patients, services) less than 11 may be displayed.** Also, no use of percentages or other mathematical formulas may be used if they result in the display of a cell less than 11. By signing this Agreement you hereby agree to abide by these rules and, therefore, will not be required to submit any written documents for CHIA review. If you are unsure if you meet the above criteria, you may submit your written products for CHIA review. CHIA agrees to make a determination about approval and to notify the Recipient within 4 to 6 weeks after receipt of findings. CHIA may withhold approval for publication only if it determines that the format in which data are presented may result in identification of individuals.

The Recipient agrees to cite the Center for Health Information and Analysis as the source of the data in any studies, reports or products in which CHIA data are used.

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13. The Recipient agrees that, absent express written authorization from CHIA's Chief Privacy Officer, General Counsel or Deputy General Counsel, the Recipient shall not attempt to link records included in the file(s) specified in section 5 to any other information. This includes attempts to link the data to other CHIA data file(s). A protocol that includes the linkage of specific files that has been approved in accordance with section 4 constitutes express authorization from CHIA to link files as described in the protocol.

14. The Recipient understands and agrees that they may not reuse original or derivative data file(s) without prior written approval from CHIA's Chief Privacy Officer, General Counsel or Deputy General Counsel.

15. The parties mutually agree that the following specified Exhibits are part of this Agreement:

Exhibit A: Approved Data Request, dated _____

Exhibit B: CHIA Confidentiality Agreement

Exhibit C: APCD Final Data Specifications, dated _____

Exhibit D: Certificate of Project Completion and Data Destruction

Exhibit E: Approved Data Management Plan, dated _____

16. The Recipient agrees that in the event CHIA determines or has a reasonable belief that the Recipient has made or may have made a use, reuse or disclosure of the aforesaid file(s) that is not authorized by this Agreement or another written authorization from CHIA's Chief Privacy Officer, General Counsel or Deputy General Counsel, CHIA, at its sole discretion, may require the Recipient to: (a) promptly investigate and report to CHIA the Recipient's determinations regarding any alleged or actual unauthorized use, reuse or disclosure, (b) promptly resolve any problems identified by the investigation; (c) if requested by CHIA, submit a formal response to an allegation of unauthorized use, reuse or disclosure; (d) if requested by CHIA, submit a corrective action plan with steps designed to prevent any future unauthorized uses, reuses or disclosures; and (e) if requested by CHIA, return data files to CHIA or destroy the data files it received from CHIA under this agreement. The Recipient understands that as a result of CHIA's determination or reasonable belief that unauthorized uses, reuses or disclosures have taken place, CHIA may refuse to release further CHIA data to the Recipient for a period of time to be determined by CHIA.

The Recipient agrees to report loss of these data or disclosure to any unauthorized persons to CHIA within three days of such loss or unauthorized disclosure and to cooperate fully in any CHIA incident response process. While CHIA retains all ownership rights to the data file(s), as outlined above, the Recipient shall bear the cost and liability for any privacy and security breaches from the data file(s) while they are entrusted to the Recipient. Furthermore, if CHIA determines that the risk of harm requires notification of affected individual persons of the security breach and/or other remedies, the Recipient agrees to carry out these remedies without cost to CHIA.

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17. A Recipient who violates this Data Use Agreement, or 957 CMR 5.00, will be subject to all penalties and remedies allowed by law, including but not limited to M.G.L. c. 214 § 1B and M.G.L. c. 93A. CHIA may notify state and federal law enforcement officials, as applicable, of any data breaches in connection with any violation of this Agreement. It is the sole responsibility of the Data Recipient to ensure compliance with all other local, state, and federal laws and regulations.

18. By signing this Agreement, the Recipient agrees to abide by all provisions set out in this Agreement and acknowledges having received notice of potential penalties for violation of the terms of the Agreement.

19. The Recipient acknowledges that CHIA MAKES NO REPRESENTATIONS OR WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO CHIA DATA, THE SOFTWARE, OR ANY OTHER INFORMATION PROVIDED BY CHIA OR ITS AGENTS WITH RESPECT TO ANY OF THE FOREGOING, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO CHIA DATA, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, CHIA MAKES NO WARRANTY, GUARANTEE OR REPRESENTATION REGARDING THE USE, OR ANY INTENDED, EXPECTED, OR ACTUAL RESULTS OF THE USE, OF CHIA DATA, THE SOFTWARE, OR ANY OTHER INFORMATION PROVIDED BY CHIA IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. CHIA DOES NOT MAKE ANY WARRANTIES THAT CHIA DATA, SOFTWARE, OR ANY OTHER INFORMATION PROVIDED BY CHIA WILL BE ERROR-FREE. CHIA SPECIFICALLY DISCLAIMS ALL EXPRESS WARRANTIES NOT STATED HEREIN AND ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO CHIA AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY EXPANSION, MODIFICATION, OR ADDITION TO THE LIMITATION AND EXCLUSION OF WARRANTIES IN THIS AGREEMENT.

CHIA USES AVAILABLE TECHNOLOGY TO MATCH PATIENT IDENTITIES WITH THEIR HEALTH INFORMATION IN ORDER TO PROVIDE PARTICIPANTS WITH DE-IDENTIFIED PATIENT INFORMATION. BECAUSE PATIENT INFORMATION IS MAINTAINED IN MULTIPLE PLACES, NOT ALL OF WHICH ARE ACCESSIBLE TO CHIA, AND BECAUSE NOT ALL PATIENT INFORMATION IS KEPT IN A STANDARD FASHION OR IS REGULARLY UPDATED, IT IS POSSIBLE THAT FALSE MATCHES MAY OCCUR OR THAT THERE MAY BE ERRORS OR OMISSIONS IN THE INFORMATION. CHIA DOES NOT AND CANNOT INDEPENDENTLY VERIFY OR REVIEW THE INFORMATION TRANSMITTED FOR ACCURACY OR COMPLETENESS.

20. On behalf of the Recipient the undersigned individual hereby attests that he or she is authorized to legally bind the Recipient to the terms of this Agreement and agrees to all the terms specified herein.

Name and Title of Recipient's Authorized Agent:-

Company/Organization : _____

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Street Address City	State	ZIP Code
Office Telephone <i>(Include Area Code)</i>	E-Mail Address	
Signature	Date	

21. The parties mutually agree that the following named individual is designated as Custodian of the file(s) on behalf of the Recipient and will be the person responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement and the approved Data Management Plan, attached as **Exhibit E**, to prevent unauthorized use. The Recipient agrees to notify CHIA within fifteen (15) days of any change of custodianship. The parties mutually agree that CHIA may disapprove the appointment of a custodian or may require the appointment of a new custodian at any time.

The Custodian hereby acknowledges his/her appointment as Custodian of the aforesaid file(s) on behalf of the Recipient, and agrees to comply with all of the provisions of this Agreement on behalf of the Recipient's Authorized Agent.

Name of Custodian _____

Company/Organization _____

Street Address City	State	ZIP Code
Office Telephone <i>(Include Area Code)</i>	E-Mail Address <i>(If applicable)</i>	
Signature	Date	

22. The parties mutually agree that the following named individual will be designated as point-of-contact for the Agreement on behalf of CHIA.

On behalf of CHIA, the undersigned representative of CHIA's Legal Department (Chief Privacy Officer, General Counsel, Deputy General Counsel) hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

Name of CHIA Representative:

Title:

501 Boylston Street, 5th Floor

Boston, MA 02116

E-mail:

Office Phone:

Signature:

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Date: _____

EXHIBIT B
CONFIDENTIALITY AGREEMENT

I, _____, hereby acknowledge that, in connection with a request for All-Payer Claims Database data and/or Hospital Discharge Database data under an agreement (the "Agreement") with CHIA, I may acquire or have access to confidential information or individually identifiable information of patients. This information includes, but is not limited to, patient level protected health information (PHI - eligibility, claims, providers), health insurance coverage information, financial institution match information, as well as "personal data" as defined in G.L. c. 66A (collectively, the "Information").

I will comply with all of the terms of the Agreement with CHIA regarding the access, use, and disclosure of any Information provided by CHIA.

I will at all times maintain the confidentiality of the Information. I will not inspect or "browse" the Information for any purpose not outlined in the Agreement. I will not access, or attempt to access, my own Information for any purpose. I will not access, or attempt to access, Information relating to any individual or entity with which I have a personal or financial relationship, for any reason. This includes family members, neighbors, relatives, friends, ex-spouses, their employers, or anyone not necessary for the work assigned. I will not, either directly or indirectly, disclose or otherwise make the Information available to any unauthorized person at any time.

I understand that any violations of this Agreement, M.G.L. c. 93H (regarding data breaches), M.G.L. c. 93I (regarding data destruction), and other laws protecting privacy and data security may subject me to criminal or civil liability. I further understand that CHIA will notify state and federal law enforcement officials, as applicable, of any data breaches in connection with any violation of this Agreement.

Signed: _____

Signature Date _____

Print Name: _____

Title: _____

Organization: _____

Address: _____

Telephone: _____ E-Mail: _____

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EXHIBIT D
CERTIFICATION OF PROJECT COMPLETION & DATA DESTRUCTION

NOTE: CHIA Data must be destroyed so that it cannot be recovered from the electronic storage media. Acceptable methods include the use of file wiping software implementing at a minimum DoD.5200.28-STD (7) disk wiping, and the degaussing of backup tapes. Electronic storage media such as floppy disks, CDs, and DVDs used to store data must be made unusable by physical destruction. All data destruction must comply with the requirements of M.G.L. c. 93I.

The undersigned hereby certifies that the project described in this Application is complete as of this date: _____

The undersigned further certifies as follows (check the appropriate section):

☐ I/we certify that we have destroyed all data received from CHIA in connection with this project, in all media that was used during the project. This includes, but is not limited to, data maintained on hard drives and other storage media.

☐ I/we certify that I/we will continue to hold data pending any request for an extended retention date (which request may or may not be granted by CHIA in its discretion.)

SIGNATURE(S):

Authorized Agent : _____

Date: _____

Organization: _____